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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 1620 of 2004
Date of decision: 25.9.2007

Kailash Devi and others **...Appellants**

Versus

Avtar Singh and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. M. L. Saggar, Senior Advocate with
Mr. G.S. Brar, Advocate for the appellants.

Mr. Jagtar Singh, Advocate for the respondent No.1.

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RAJESH BINDAL, J.

The defendants are in appeal before this Court against the judgment of the learned Lower Appellate Court whereby the judgment and decree of the trial Court was reversed.

2. In the suit filed by the respondent/plaintiff, the claim made is for possession, as owner of the premises bearing municipal No. B-VII/212 and as well as bearing evacuee property No.124/7, situated near Dana Mandi, within the abadi of Phillaur Town. The trial Court rejected the claim primarily on the ground that the description of the property could not be identified and that it could not be proved that the respondent/plaintiff is owner of the property. However, learned Lower Appellate court on re-appreciating the entire material on record came to the conclusion that the property is duly identified even starting from the person in whose favour the allottment was made as evacuee property. The description given in the site plan Ex. PW-5/C prepared on May 10, 1955 of the boundaries of the property allotted to the vendor of the respondent/plaintiff duly matched with the details of the property mentioned in the sale deed in his favour and also what was mentioned in the plaint. The another clincher in the case was the admission made by the appellant herself, when Ex. PW-3/A, the

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statement made in other suit filed by her for injunction was confronted. In her cross examination, the appellant admitted that the respondent/plaintiff had purchased the property in dispute. Once appellant herself had admitted in her cross examination that respondent/plaintiff had purchased the property in dispute, there remained no issue regarding identity of the property or the ownership thereof being with the respondent/plaintiff. The contention raised by learned counsel for the appellants/defendants that in the sale deed, it has been mentioned that possession thereof has been given is also just to be noticed and rejected. Recital would not mean actual physical possession rather would mean symbolic possession also in case the property was in possession of some one else on that date.

3. Accordingly, I do not find any merit in the present appeal and the same is dismissed.

September 25, 2007 **(Rajesh Bindal)**
Pka **Judge**